

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0293P**  
**Sales and Use Taxes**  
**For the Calendar Year 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1; IC 6-8.1-3-17(c); 45 IAC 15-11-2

The taxpayer protests the penalty assessed for failure to timely file its annual sales tax return due by its due date and remit the appropriate tax.

**STATEMENT OF FACTS**

The taxpayer filed its annual return for sales and use taxes for calendar year 2004 after the due date. Accordingly, the department assessed a penalty for the taxpayer's failure to timely remit its tax. In his letter of protest, the taxpayer's controller requested that the penalty be abated due to reasonable cause.

**I. Tax Administration – Penalty**

The taxpayer makes two arguments in its request for waiver of the penalty:

- The department failed to provide the appropriate forms in a timely manner.
- Some taxpayers that truly were negligent had penalties and interest waived as part of the Indiana Tax Amnesty Program.

Following an audit by the department, the taxpayer believed the department would automatically mail the appropriate forms for reporting sales and use taxes. Apparently, this did not happen. Eventually, the taxpayer contacted the department, and the appropriate forms were obtained. While the department makes a reasonable effort to provide forms to taxpayers, it is not required to do so. Obtaining tax forms so that returns can be filed in a timely manner is the responsibility of the taxpayer.

Regarding the Indiana Tax Amnesty Program, IC 6-8.1-3-17(c) states, "The department shall establish an amnesty program for taxpayers having an unpaid tax liability for a listed tax that was due and payable for a tax period ending before July 1, 2004." The liability under protest is for

the taxable period ending December 31, 2004; hence, it is not eligible for the amnesty program. While the department acknowledges the taxpayer's frustration, it is required to apply the statute as it was written.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer has not established that its failure to timely file the return in question and pay the appropriate tax was due to reasonable cause and not due to negligence.

### **FINDING**

The taxpayer's protest is denied.